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September 21, 2010

To: Supervisor Gloria Molina, Chair
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From: William T Fujioka
Chief Executive Officer

DEVELOPMENT PROJECT REVIEW OF NEW OR EXTENDED SEWER AND/OR WATER SYSTEMS

On August 3, 2010, your Board instructed the Chief Executive Office, in conjunction with the Directors of Regional Planning, Director of Public Works, and County Counsel, to report back within 45 days regarding: 1) what mechanisms are currently in place to ensure that the initial decision to build in Los Angeles County (County), or have a development rely upon, new or dramatically extended sewer and/or water systems, can be fully reviewed for any potential environmental impacts; 2) recommended changes that would ensure that the County has the maximum discretion to consider those impacts before such development projects, including any related major sewer and/or water system improvements, are approved; and 3) cost impacts to individual homeowners to comply with any recommended change to the extent this information is available at the time of the report.

Water and Sewer Projects By Local Agencies

In general, the California Government Code (Gov. Code) requires local agencies, such as water districts, to comply with the building and zoning ordinances of the cities and counties in which they are located, including conducting whatever environmental review those ordinances would require when developing local agency projects. The Gov. Code has several notable exceptions however, making local agencies immune from local building and zoning ordinances for certain types of projects.

Gov. Code section 53091 provides that the building and zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, or treatment of water or electrical energy by a local agency. This Gov. Code section further provides that the building ordinances, but not the zoning ordinances, of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, or treatment of wastewater by a local agency.

Thus, under these provisions, when a local agency proposes a water-related project in the County, involving the generation, production, storage or treatment of water, the County's building and zoning ordinances will not apply to the project. This means that the County will not conduct an environmental review of the impacts of the project, and will have little or no authority over approval of the project.

Conversely, when a local agency proposes a sewer-related project in the County, involving the generation, production, storage or treatment of wastewater, the County's building ordinances will not apply to the project, but the County's zoning ordinances will apply. Accordingly, the County will have zoning authority to consider approval of the sewer project, and to the extent that the County's zoning ordinances would require an environmental review of the impacts of the project, such an environmental review would be conducted by the County prior to its determination as to whether to approve the project.

It should be noted that, in the context of water and sewer-related projects, these immunity provisions from local building and zoning ordinances are only considered when such infrastructure projects are undertaken by, or directly on behalf of, a local agency. In other words, if a water or sewer-related project is developed by a local agency, and will be owned and operated by the local agency, or alternatively, if such a project is developed by a private party on behalf of a local agency, and immediately upon completion the project will be transferred by the private party to the local agency to own and operate, then the above immunity provisions are triggered.

Conversely, if a water or sewer-related project is developed by a private party, and will ultimately be owned and operated by the private party, such as a private water company, then the above immunity provisions are inapplicable. In these instances, the County's building and zoning ordinances will apply to such projects and the County will conduct whatever environmental review is required under its ordinances prior to determining whether to approve these projects.

Current Development Project Review Mechanisms

Public Works

The Department of Public Works reviews privately constructed sewers as a "Private Contract Sewer Project". A Private Contract Sewer project (PC) is a project that entails the construction of a Public Sewer by a private party. The projects are usually associated with a private development project, and the construction of the sewer improvements are usually done to serve the development in question. On occasion, a PC project is constructed by a private party to provide sewer service to an existing development that utilizes an onsite wastewater treatment system, or a new small non-subdivision development.

The type of projects that entail PC Sewer construction typically fall within two categories: discretionary and ministerial. The discretionary projects typically go through a CEQA determination as part of Regional Planning's review process, while the ministerial projects do not undergo CEQA review.

The review of Private Contract Sewer plans follow the latest Board adopted CEQA guidelines to determine whether the project is discretionary or ministerial. In general, for non-subdivision sewer main extensions within the public right of way, one mile is the threshold for the extension that triggers CEQA review. That is, a pipeline project that exceeds one-mile is generally considered a discretionary project under CEQA subject to environmental review, while a pipeline project less than one-mile is generally considered a ministerial project and thus is exempt from CEQA review.

For non-subdivision water main extensions, Public Works does not review the plans, thus their role is limited to issuing an encroachment permit for work to be performed in the road right-of-way.

Regional Planning

The Department of Regional Planning typically does not review stand-alone infrastructure projects because most do not require land use entitlements. These types of projects are generally located in the public right-of-way, or are subject to the State's immunity provisions. Infrastructure installed as part of a project that requires a land use entitlement would be reviewed as part of that project, and would be subject to CEQA if the project is discretionary.

Recommended Changes to Development Project Review

In response to the Board motion, three options exist to ensure the County would have maximum discretion to consider environmental impacts before infrastructure development projects are approved.

The first option would be to require a conditional use permit (CUP) for any development project, including a single-family residence, in the sensitive area under consideration. This option would ensure discretionary review whether or not infrastructure is part of the development project.

The second option would be to require a CUP for any development project that disturbs specific environmental resources in the involved area, where the environmental resources would be identified. This option would tie the need for discretionary review specifically to the disturbance of environmental resources. If this option were chosen, the Board could further direct staff as to the types of environmental resources it believes warrant this additional level of review.

The third option would be to develop thresholds that trigger differing levels of review for those projects that disturb environmental resources in the involved area. An example of this can be found in the Grading and Significant Ridgeline Ordinance, adopted by the Board in 2004, which requires a CUP when grading on a parcel exceeds 5,000 cubic yards. Another example can be found in the Draft Santa Monica Mountains Local Coastal Program (LCP), which the Board has signified its intent to approve. In the Draft LCP, projects requiring a new access road that crosses a vacant parcel are subject to a minor Coastal Development Permit (CDP); a minor CDP requires a public hearing and through the public hearing process, environmental review is completed. This option would subject projects with fewer impacts to a lower level of review, and projects with greater impacts would be subjected to a heightened level of review.

Thresholds for purposes of the third option could be based on several criteria, such as, but not limited to, the area of environmental resources disturbed, cubic yards of graded material, and length of the installed infrastructure. Provisions based on each of these criteria currently exist in the County Code, and have been applied to development projects for many years.

For purposes of this discussion, these options could be implemented through, among other means, an amendment or amendments to a Community Standards District.

Compliance Cost Impact to Homeowners

Costs to property owners to comply with the recommended changes depend upon which option, if any, would ultimately be implemented. In the case of the third option, based on review thresholds, costs will also depend upon the intensity of the development and the impact on resources.

All of the above options would require an environmental assessment, but the type of permit or review required, and its associated costs, would depend on the option selected by your Board. The range of possible costs could be from approximately $300 to $8,500 depending on, for example, whether the required permit is a CUP (with a current cost of $8,172), a minor CUP (with a current cost of $1,399), or a discretionary site plan review (with the current cost of $1,044).

These fees do not necessarily include any concurrent review or permits that may be required, such as the potential review by the Environmental Review Board, or the review for an Oak Tree Permit, and do not include the cost of any environmental documents that may be required as a result of the environmental assessment.

Conclusion

If your Board determines to move forward with implementing any of these options, it may direct the affected Departments to prepare an amendment, or amendments, to Title 22 of the County Code. Any ordinance amendment(s) to Title 22 must be considered first by the Regional Planning Commission, and then by the Board of Supervisors.

If you have any questions or require additional information, please contact me or your staff may contact Rochelle Goff at (213) 893-1217, or via email at rgoff@ceo.lacounty.gov.

WTF:BC:RG
AB:kd

c: Executive Office, Board of Supervisors
County Counsel
Public Works
Regional Planning